

## **REMARKS**

### **Status of the Claims**

Claims 1-32 are pending in this application. Claims 2-13 and 18-27 were withdrawn from consideration by the Examiner. Claims 1 and 14-17 were rejected.

By this Amendment, claims 1, 3, 5, 14, and 16 have been amended, and claims 28-32 have been added. Claims 3 and 5 were amended to correct typographical errors, and support for the other amendments can be found throughout the specification and claims as originally filed.

### **Claim Rejections Under 35 U.S.C. § 102**

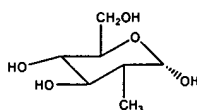
Claims 1 and 14-17 have been rejected under 35 U.S.C. § 102(a) as being anticipated by WO 99/49837 to Philippe, *et al.* Applicants respectfully traverse this rejection. As an initial matter, Applicants would like to point out that, based on the WO 99/49837 publication date of October 7, 1999, which predates the filing date of the instant application by more than one year, this reference qualifies as prior art under 35 U.S.C. § 102(b), rather than § 102(a). Nevertheless, the reference fails to anticipate the claimed invention for the reasons set forth below.

In the body of the rejection, the Examiner states that WO 99/49837 teaches the claimed compounds used for strengthening and care of keratinous fiber and posits that the application of Applicants' claimed compounds would inherently prevent the drying out of keratin fibers, as claimed. (Office Action, page 3.) WO 99/49837 is silent with

respect to methods of improving the moisturizing of, preventing from drying out, and cosmetic treatment of substances such as skin and mucous membranes.

Independent claims 1, 14 and 16, have been amended and no longer encompass a method of improving the moisturizing of and/or preventing from drying out of keratin fibers. Accordingly, the rejection is moot with respect to claims 1, 14 and 16, as well as claims 15 and 17 which depend therefrom, since WO 99/49837 does not disclose skin and mucous membranes. Further, WO 99/49837 does not teach or suggest methods of improving the moisturizing of, preventing from drying out, and cosmetic treatment of substances such as skin and mucous membranes, and therefore does not render obvious claims 1 and 14-17.

Additionally, Applicants wish to point out that new claims 28-32 are patentable in light of WO 99/49837. Claims 28-32 recite methods including applying homopolymers of Formula I and salts thereof in which  $R_1$  of Formula I is:



WO 99/49837 does not teach or suggest homopolymers or salts thereof comprising such a carbohydrate analog. Accordingly, new claims 28-32 are not anticipated or rendered obvious by WO 99/49837.

Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 102.

### **Double Patenting Claim Rejections**

Claims 1 and 14-17 have been rejected under the judicially created doctrine of double patenting over claims 23-25, 27 and 28 of U.S. Patent No. 6,585,962 to Philippe, *et al.* (the '962 patent). Applicants respectfully traverse this rejection.

The Examiner states that the pending claims, if allowed, would improperly extend the right to exclude already granted in the '962 patent and asserts that the subject matter claimed in the instant application is obvious from the teachings in the '962 patent and claims therein. (Office Action, pages 3 and 4.) The Examiner states that the difference between the claims of the '962 patent and the instant claims is that the instant claims are directed to a "moisturizing feature" and that the skilled artisan would have been motivated to use the compounds of the '962 patent to moisten the skin because the compounds were known to keep the skin and lips moist. (Office Action, page 4.) Further, the Examiner states that "there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent." (*Id.*)

Applicants respectfully disagree with the Examiner's assertions. First, amended claims 1 and 14-17 are directed to methods of improving the moisturizing of, preventing from drying out, and cosmetic treatment of substances such as skin and/or mucous membranes, and new claims 28-32 are directed to methods of improving the moisturizing of, preventing from drying out, and cosmetic treatment of skin, mucous membranes, and/or keratin fibers. In contrast, claims 23-25, 27 and 28 of the '962 patent are directed to processes for preserving compositions, for example, to combat

the growth of microorganisms in cosmetic and dermatological compositions. Because the claims of the '962 patent and the instant application are directed to different methods and processes, the pending claims, when allowed, will not improperly extend the right to exclude already granted in the '962 patent.

Applicants also disagree with the Examiner's assertion that the pending claims could have been presented during the prosecution of the '962 patent. The disclosure in the specification and genus of formula (I) of the '962 patent and the genus of formula (I) of the instant application are different, and therefore the instant claims could not have been presented during the prosecution of the '962 patent. For example, the pending claims include hydrogen and the sugar analog illustrated above as options for R<sub>1</sub>. These options are not disclosed in or rendered obvious by the '962 patent.

Accordingly, Applicants respectfully request withdrawal of the double patenting rejection.

## **Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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